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State of New York Public Employment Relations Board Decisions from February 28, 1996

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from February 28, 1996

Keywords

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Comments

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2A- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, ROCKLAND
COUNTY LOCAL 844, ROCKLAND COUNTY UNIT,

Charging Party,

-and-

CASE NO. U-14788

COUNTY OF ROCKLAND,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (MIGUEL ORTIZ of counsel),
for Charging Party

PAUL NOWICKI, COUNTY ATTORNEY (JACK SCHLOSS of counsel), for
Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the County of Rockland (County) to a decision by an Administrative Law Judge (ALJ) finding that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by failing to negotiate in good faith with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rockland County Local 844, Rockland County Unit (CSEA). CSEA alleges in its charge that the County negotiated in bad faith by misrepresenting its financial condition to it and to the fact finder. CSEA further alleges that based upon the County's representations, it subsequently agreed to a 1993-95 contract, acceding to the County's demand that there be no salary increases for unit employees for 1992.

After a hearing, at which the County rested without calling any witnesses, the ALJ found that the County had deliberately misrepresented its financial condition at fact-finding and to CSEA in negotiations following fact-finding, and ordered the County to reopen negotiations, at CSEA's request, for 1992 salaries for unit employees.

The County excepts to the ALJ's decision, arguing that there is no record evidence that the County deliberately misrepresented its financial status or withheld requested financial information from CSEA or that CSEA relied to its detriment on any financial information which it received from the County. In fact, the County asserts, CSEA had agreed that the County had fulfilled all of its bargaining obligations under the Act for 1992. CSEA supports the ALJ's decision.

After a review of the record and a consideration of the parties' arguments, we affirm the decision of the ALJ in part and reverse in part.

Only CSEA called any witnesses or introduced any evidence at the hearing, which the ALJ relied upon in finding the following facts. The County and CSEA were parties to an agreement which expired on December 31, 1991. The parties commenced negotiations in 1991 and were engaged in negotiations and mediation through 1992. CSEA sought a three-year agreement, with salary increases in each year. The County originally proposed a one-year

agreement with no salary increase,^{1/} but modified its position in early 1992, calling for a three-year agreement, with a salary freeze in 1992, and raises of three and four percent in 1993 and 1994, respectively. A fact-finding hearing was held on January 20, 1993. Through its Deputy Budget Director, Clint Toms, the County introduced a document at the fact-finding hearing showing that the County estimated a negative fund balance in the general fund for 1992.^{2/} CSEA's witnesses disputed the evidence concerning the County's financial circumstances and testified at the fact-finding hearing that the County had "overestimated expenditure accounts and underestimated sales tax revenue". The fact finder's report, which issued on February 4, 1993, noted that the County had projected a two to three million dollar deficit for 1992. Based on the evidence the County submitted, the fact finder recommended no salary increase for 1992, a three percent increase for 1993 and a four percent increase for 1994, as proposed by the County. CSEA rejected the

^{1/}The County asserted throughout negotiations that it was facing a deficit for 1992 in its general fund, the fund which is the County's primary operating fund and which includes all of the County's revenues and expenditures not required by law to be accounted for in other funds. The County took the position that it was, therefore, unable to fund any salary increases for 1992.

^{2/}The County also offered evidence regarding the large number of layoffs which had occurred in 1991, a decline in the County's credit worthiness rating, and problems with federal aid, tax rates and collection of taxes. Although the County's 1992 fiscal year ended on December 31, 1992, final closure of its books was not required until March 31, 1993.

fact-finding report.^{3/} The parties thereafter resumed negotiations, with the County continuing to maintain that it could not fund a salary increase for 1992.^{4/} On April 30, 1993, the County and CSEA concluded a contract for 1993-95, with a three percent increase for 1993, four percent for 1994 and five percent for 1995. Annexed to that contract is a letter of understanding addressing 1992, which states:

The CSEA agrees that for calendar year 1992, the County has complied with all of its Taylor Law obligations and the Union agrees that as of the effective date of this agreement the CSEA has accepted the same terms and conditions of employment (including salary) for calendar year 1992 as existed on December 31, 1991.

The proposed agreement was thereafter ratified by the CSEA membership.

Larry Sparber, the CSEA collective bargaining specialist who had participated in the negotiations, testified that in seeking ratification of the agreement, the negotiating team explained to the membership that the contract

was based upon the fact finder. We had succeeded in getting an additional year on the contract, extending it one more year. There were other parts to the new agreement affecting health insurance, which were of primary interest to the overall membership, and we felt

^{3/}Caroline Osinga, CSEA unit president, testified that the unit members

didn't believe it. They felt that it was being hidden, that the County did not -- that the County in fact had the money and we were not being given our due that they felt we should have gotten.

^{4/}There is no record evidence that the County continued to reiterate in these negotiations that there would be a deficit for 1992 or what the amount of the deficit would be.

we succeeded in getting the best deal we could in regards to the health insurance.

So as a total package even though the group was -- from CSEA's standpoint was very dissatisfied with the 1992 negative increase, the overall package was something we felt that we could at least bring back to the membership and see how they would feel about that.

From June through August 1993, Harold Peterson, the County Commissioner of Finance, and John Grant, the County Executive, were quoted in local newspapers as saying that the County budget had an \$8.4 million surplus in the general fund for 1992.^{5/} Osinga testified that she heard both men make similar statements in radio interviews.

County Legislator Bruce Levine also testified that, pursuant to his inquiries about the County's budget status in October and November 1992, he was told by Peterson and Toms that there was approximately \$2 million in surplus from 1991, that the County would either have the \$2 million "left", or that the County might be short and have to use that surplus for 1992. In either event, no deficit was indicated to the legislature. Moreover, in the

^{5/}A June 16, 1993 newspaper article quotes Peterson as saying:

The [C]ounty of Rockland did not negotiate in bad faith. The contract of no increase this year ... is a fair contract, and a reasonable one. If the CSEA had bothered looking into it in November, they could have found out that we had this surplus. We did nothing - everything was public record.

Grant wrote a letter to the Rockland Journal-News, appearing in the August 8, 1993 edition, confirming the surplus and explaining that the County had

saved \$2.1 million through strict enforcement of budgetary controls and management discipline, \$4.4 million by refinancing the County's debt, and we retained \$1.9 million from the previous year's reserve.

spring of 1993, Peterson or Toms told Levine that they had known in late December 1992 or early January 1993 (before the fact-finding hearing) that there was going to be a "big chunk of money coming in" and a "significant" surplus in the 1992 County budget, as a result, in part, of a refinancing of the County's retirement fund obligation and the sale of bonds to pay for this obligation.

The ALJ found that the County had deliberately misrepresented its finances at fact-finding and in subsequent negotiations with CSEA, that the fact finder relied, at least in part, upon the County's misrepresentations in making his report and recommendation, and that CSEA relied upon the County's misrepresentations in agreeing that the County had fulfilled its obligations under the Act for 1992.

The County argues that there is no record evidence that the County or its agents lied about its financial condition either at fact-finding or during the negotiations that followed. However, based upon the unrebutted testimony at the hearing and the documentary evidence, the ALJ found that County agents knew at least by late December 1992 or early January 1993 that there would be a surplus. Yet, at the fact-finding hearing, the County submitted a document to the fact finder which stated that for 1992 the unrestricted fund balance was "Est. Negative", and, according to the fact finder's report, Toms presented evidence at the fact-finding hearing that the County was facing a two to three million dollar deficit for 1992.

It is a basic tenet of labor relations that "good-faith bargaining necessarily requires that claims made by either

bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages".^{6/} To the same effect, we have previously held:

[t]o deliberately mislead a party in response to its specific inquiry is no more consistent with the concept of good faith bargaining than would be the fabrication and distribution of false information.^{7/}

A party to a bargaining relationship violates its duty to negotiate in good faith when it knowingly and intentionally misrepresents material facts in its possession during negotiations. We have previously found that the duty to negotiate in good faith extends through mediation and fact-finding and during the parties' subsequent negotiations.^{8/} We find that the County deliberately misrepresented to CSEA and the fact finder at fact-finding that it would and did have a negative fund balance for 1992, when, according to unrebutted testimony, it knew prior to the fact-finding hearing that there was a significant surplus for that year. The misrepresentation to the fact finder is particularly disturbing because the Act's impasse procedures cannot work as intended if the neutral who is attempting to aid the parties in reaching an agreement is given false factual information. That the County provided to CSEA specific documentation which CSEA requested during the course of

^{6/}NLRB v. Truitt Mfg. Co., 351 U.S. 149, 38 LRRM 2042, 2043 (1956).

^{7/}State of New York (Governor's Office of Employee Relations), 25 PERB ¶3078, at 3159 (1992), aff'd, 197 A.D.2d 341, 27 PERB ¶7006 (3d Dep't 1994).

^{8/}Poughkeepsie Public School Teachers Ass'n, 27 PERB ¶3079 (1994); City of Mount Vernon, 11 PERB ¶3095 (1978).

negotiations does not negate the misrepresentation, even if those documents were wholly accurate. The violation found in this case is premised upon the misrepresentation of fact, not any failure or refusal to provide information upon demand. We emphasize that what is not in issue here are expressions of opinion or bargaining positions taken during negotiations. Our decision addresses only an affirmative misrepresentation of material fact, i.e., the specifically asserted existence of a budget deficit in the face of a known surplus. Therefore, the County violated §209-a.1(d) of the Act when it deliberately misrepresented its budget balance for 1992 to the fact finder and to CSEA at fact-finding. The letter of understanding attached to the 1993-95 collective bargaining agreement in no way absolves the County of its wrongful conduct because that letter of understanding derived, at least in part, from the very misrepresentations which violated the County's obligations under the Act.

We do not find, however, that the record supports the ALJ's finding that the County specifically continued its misrepresentations of a budget deficit in its negotiations with CSEA after fact-finding. Therefore, that part of the ALJ's decision finding that the County violated the Act by misrepresenting its budget deficit in negotiations after fact-finding is reversed.

Given our finding that the record does not show that the County continued to misrepresent its financial condition during the negotiations with CSEA subsequent to fact-finding, we also modify the ALJ's remedy to the extent that it orders the County

to reopen negotiations upon CSEA's demand for salaries for unit employees for 1992.

The ALJ's order of a salary reopener for 1992 effectively rescinds the parties' agreement for that year. Rescission is an extraordinary remedy, which may be warranted in cases involving a knowingly fraudulent misrepresentation of material fact, where there is both an intent to deceive a party and detrimental reliance upon the misrepresentation, which results in an inducement to agree or to execute an agreement.^{2/} The County's misrepresentation of its financial condition to the fact finder and CSEA at fact-finding constitutes a serious breach of its duty to negotiate in good faith. We strongly rebuke the County for making it. However, we cannot find, upon the facts presented here, detrimental reliance inducing agreement on the misrepresentation alone. CSEA did rely, in part, upon the County's misrepresentations at fact-finding and the fact finder's conclusions based upon those misrepresentations when it agreed to no salary increase for unit employees for 1992, but CSEA also continued to express its doubts about the County's financial condition throughout the subsequent negotiations, as it had at fact-finding. Therefore, the reopener of the 1992 agreement, as ordered by the ALJ, is not warranted.

In any event, the agreement finally negotiated was for an additional year (1995) and included salary increases for each of

^{2/} See Rozay's Transfer v. Teamsters Local 208, 128 LRRM 2955 (9th Cir. 1988). See also Steelworkers v. Johnston Industries, 120 LRRM 2695 (E.D. Mich. 1984).

several years, as well as enhanced health benefits. We cannot determine whether CSEA accepted no salary increase for 1992 because an additional year was added to the agreement with an accompanying salary increase, because of the improved health insurance provisions, because of the County's misrepresentations at fact-finding, because of some combination of the above, or because of other reasons. The 1992 agreement simply cannot be severed from the remainder of the parties' contract. Therefore, if we were to order a reopening of any portion of the parties' agreement, it would be necessary to rescind it in its entirety, not only for one year. We do not consider such a remedy to be appropriate, there being no impropriety alleged or found in conjunction with the 1993-95 agreement.

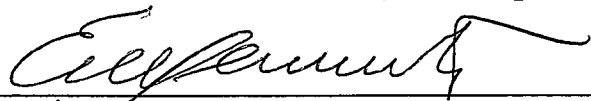
Based on the foregoing, we deny the County's exceptions and affirm the ALJ's decision except as reversed to the extent noted above.

IT IS, THEREFORE, ORDERED that the County:

1. Cease and desist from misrepresenting its budget balance at fact-finding.
2. Sign and post the notice in the form attached in all locations at which notices of information to CSEA unit employees are ordinarily posted.

DATED: February 28, 1996
Albany, New York


Pauline R. Kinsella, Chairperson


Eric J. Schmertz, Member

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees in the unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rockland County Local 844, Rockland County Unit (CSEA) that the County of Rockland:

1. Will not misrepresent its budget balance at fact-finding.

Dated

By
(Representative) (Title)

COUNTY OF ROCKLAND
.....

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

2R- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VELTON NIX,

Charging Party,

-and-

CASE NO. U-15705

TRANSPORT WORKERS UNION, LOCAL 100,

Respondent,

-and-

NEW YORK CITY TRANSIT AUTHORITY,

Employer.

RICHARD V. RAPPAPORT, ESQ., for Charging Party

O'DONNELL, SCHWARTZ, GLANSTEIN & ROSEN (EDWARD PENDELTON of
counsel), for Respondent

MARTIN B. SCHNABEL, ACTING GENERAL COUNSEL (EVELYN JONAS of
counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Velton Nix to a decision of an Administrative Law Judge (ALJ) dismissing his charge that the Transport Workers Union, Local 100 (TWU) violated §209-a.2(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) in connection with its representation of him concerning disciplinary charges brought against him by his employer, the New York City Transit Authority (Authority).^{1/} The Authority was

^{1/}The alleged violation of §209-a.2(b) was not processed as Nix was advised that he did not have standing to allege a violation of that section of the Act.

made a party pursuant to §209-a.3 of the Act. The ALJ found that there was no evidence that the TWU had violated either §209-a.1(a) or (c) of the Act.

Nix excepts to the ALJ's decision, arguing that the ALJ erred in finding that he had excessive absences, that the TWU had represented him fairly in his disciplinary arbitration, that no violation occurred with respect to the adjournments of the disciplinary arbitration sought by the TWU, and that it did not violate the Act when it failed to advise him that he could file a grievance over pay lost while he was suspended pending his termination. The Authority and the TWU support the ALJ's decision.

Based upon our review of the record and consideration of the parties' arguments, we affirm the decision of the ALJ.

The record shows that Nix was employed by the Authority as a station cleaner from 1984 until his termination in 1993, and was at all times represented by TWU. In August 1993, Nix altered the dates on his doctor's authorization for absence from work.^{2/} When this alteration was discovered by the Authority in November 1993, charges for submission of a fraudulent sick leave application were immediately brought against Nix by the

^{2/}Nix was on sick leave from work, pursuant to a doctor's note, from August 3 to August 14, 1993. He altered the doctor's note to show a return date of August 19, 1993.

Authority, resulting in his suspension. The Authority sought his termination.^{3/}

While Nix did not deny that he had submitted an altered sick leave application, the TWU asserted throughout the disciplinary proceedings that there were mitigating circumstances^{4/} and sought a lesser penalty than termination. The matter was submitted to a tripartite arbitration board, as provided in the TWU-Authority contract.^{5/} The initial hearing date of January 5, 1994, was adjourned when Nix admitted to his TWU representative for the first time just prior to the hearing that he had altered the doctor's note and that he had done so to attend a counselling session for his son on August 18, 1993. As Nix was unable at that time to offer any corroborating details,^{6/} the TWU representative obtained an adjournment to

^{3/}The charges were added to charges of abuse of sick leave which were already pending against Nix.

^{4/}Nix claimed to the TWU representative that he was having problems with his son, which the representative related to the hearing officer at steps I and II of the disciplinary process.

^{5/}The Authority's witness at the hearing, Michael Lendino, Director of Labor Relations, testified, and the ALJ so found, that the TWU was able to get one of the charges against Nix withdrawn by the Authority, but the TWU's efforts to settle the remaining charges against Nix short of termination were rebuffed by the Authority because of his prior record. During the nine years he was employed by the Authority, Nix was disciplined, warned and suspended numerous times for lateness, failure to report, and poor attendance, and was also disciplined for testing positive for drugs and for performance-related infractions.

^{6/}Nix could only relate that his son was at a treatment facility in the Bronx. He stated that he did not know the names of the facility, his son's physician or counselor.

allow Nix to get a written confirmation that his presence was necessary at his son's treatment facility and that he did, in fact, attend the counselling session on the date in question. A subsequent hearing date of February 9, 1994 was also adjourned because Nix had not yet obtained the requested documentation.^{7/} A third date of hearing, March 30, 1994, was cancelled by TWU because of contract negotiations.^{8/} The hearing was held on April 27, 1994, at which time Nix testified to the circumstances which prompted him to alter the sick leave form. He did not produce a letter from his son's physician or the treatment facility concerning the August 18 counselling session and he refused to let the TWU call his son as a witness to corroborate his testimony.^{9/} By decision dated May 9, 1994, the arbitration board sustained the Authority's charge against Nix and his employment was terminated.^{10/}

^{7/}The hearing went forward on Nix's time and attendance charges but was adjourned by the arbitration board as to the alteration of the doctor's note to enable Nix to obtain documentation of his whereabouts on August 18, 1993.

^{8/}Nix was advised that adjournments sought by the TWU would result in his not being paid. Nix was also advised, however, that because the second day of hearing was not rescheduled within the contractual time limits, he might arguably be entitled to some pay and he was instructed on how to file an affidavit with the Authority.

^{9/}Nix did have a letter from a treatment facility stating that his son had been in treatment for substance abuse from August 1992 to December 1993.

^{10/}The TWU submitted to the arbitration board awards in past cases where employees brought up on similar charges were not terminated. Lendino testified that those cases involved first instances of misconduct by employees with what were otherwise good work records.

Nix, claiming animus towards him by the TWU, testified that he was a witness at an arbitration sometime prior to 1992 on charges he had filed against another employee represented by TWU alleging that Nix had been threatened by the employee, who brandished a knife at him. He alleged that the TWU attorney handling the arbitration had tried to get him to drop the charges and state that the other employee did not have a knife. Nix claims that the TWU was angered by his testimony at the arbitration and harbored animus toward him because of this incident. He offered no evidence as to the date, the other employee or the TWU attorney who had been involved in the alleged incident.

Nix asserts in his exceptions that the TWU should have advised him in his prior disciplinary matters that he had a right to contest them so that they, arguably, could not be used against him in the disciplinary proceeding which led to his termination. This allegation was not included in Nix's charge and was not raised to the ALJ; it is, therefore, not properly before us and we do not consider it.

Nix further alleges that the TWU's actions were taken in bad faith, pointing to his testimony against another unit employee at a prior arbitration as proof of TWU's animus. The ALJ did not credit Nix's testimony. Further, there is no evidence in the record upon which to base a finding that the TWU representatives assisting Nix in his disciplinary hearing were even aware of the

prior matter, much less that they harbored animus towards Nix which affected their representation of him.

Nix also asserts that the TWU did not fairly represent him in the disciplinary proceeding. His allegations are basically that the ALJ should have credited his testimony and not that of the TWU and Authority witnesses. The ALJ specifically credited the testimony of the TWU's witnesses over Nix and we find nothing in the record which would warrant disturbing those credibility resolutions. The record reflects, and the ALJ so found, that the TWU represented Nix throughout the disciplinary proceeding, meeting with him on several occasions to discuss his case and advise him of his rights, including his right to obtain his own counsel and to resign instead of facing termination. As to Nix's assertion that the TWU made no effort to have him placed in the Employee Assistance Program (EAP), the ALJ properly found that Nix had told the TWU representatives that he was "clean" and was not "using" and, therefore, did not want or need EAP.^{11/}

Finally, Nix claims that the ALJ erred in finding that the TWU did not breach the duty of fair representation when it failed to assist him in obtaining pay during the time he was suspended and his disciplinary hearings were being adjourned. The record supports the ALJ's conclusion that Nix was informed of the contractual procedures to follow in pursuit of his pay claim. His claim was denied because of timeliness and the TWU advised


^{11/}Nix had previously been placed in EAP pursuant to his positive drug test.

him to refile. That the TWU did not further pursue this claim on his behalf does not rise to the level of arbitrary, discriminatory or bad faith conduct necessary to support the finding of a violation of the duty of fair representation.^{12/}

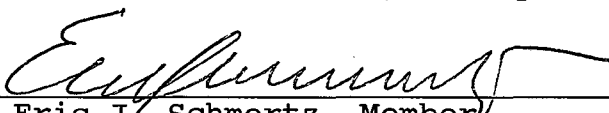
Based on the foregoing, the exceptions filed by Nix are denied and the decision of the ALJ is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: February 28, 1996
Albany, New York



Pauline R. Kinsella, Chairperson



Eric J. Schmertz, Member

^{12/}Civil Service Employees Ass'n v. Diaz, 132 A.D.2d 430, 20 PERB ¶7024 (3d Dep't 1987), aff'd on other grounds, 73 N.Y.2d 796, 21 PERB ¶7017 (1988).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

20- 2/28/96

In the Matter of

MICHELLE J. YASKEL,

Charging Party,

-and-

CASE NO. U-16044

STATE OF NEW YORK (DEPARTMENT OF
TRANSPORTATION),

Respondent.

MICHELLE J. YASKEL, pro se

WALTER J. PELLEGRINI, GENERAL COUNSEL (MAUREEN SEIDEL of
counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Michelle J. Yaskel to a decision of an Administrative Law Judge (ALJ) dismissing her charge that the State of New York (Department of Transportation)(State) violated §209-a.1(c) of the Public Employees' Fair Employment Act (Act) when it terminated her probationary appointment after she sought assistance from her union at a meeting with her supervisors to discuss her negative probationary evaluation.^{1/}

^{1/}Yaskel was hired as a senior typist effective August 12, 1993. Her continued employment was subject to a 52-week probationary period, during which she received four evaluations. In the first, she was rated satisfactory. Her second evaluation rated her as needing improvement in several areas. It was this evaluation which led to a meeting at which Yaskel, her union representative, and her supervisor were present. Yaskel's third evaluation was satisfactory. The final probationary report rated her overall as unsatisfactory. Her termination from employment was effective August 10, 1994.

The ALJ, crediting the testimony of Yaskel's supervisor, Arthur Marchesi, found that Yaskel had been engaged in protected activity when she included the union in her evaluation review meeting with Marchesi and that the State was aware of this protected activity. Based on Marchesi's testimony, however, the ALJ determined that Yaskel received her "unsatisfactory" evaluation because of her personality conflict with a co-worker who had some supervisory responsibilities over Yaskel, and Yaskel's inability, in part due to the friction with the co-worker, to follow office procedures.

Yaskel argues in her exceptions that a personality conflict alone is insufficient to terminate a probationary employee, that Marchesi's testimony should not have been credited and that case law does not support the ALJ's decision. The State asserts that Yaskel's exceptions were untimely filed and are otherwise meritless.

After a review of the record and the parties' arguments, we affirm the decision of the ALJ.

We address the State's claim of untimely exceptions first. Section 204.10 of PERB's Rules of Procedure (Rules) requires that exceptions to an ALJ's decision be filed within fifteen working days after the party's receipt of the decision. Yaskel received the ALJ's decision on November 6, 1995, and filed her exceptions on November 28, 1995. Section 200.9 of the Rules provides that working days do not include Saturdays, Sundays or legal holidays. Excluding Saturdays, Sundays, Election Day, and Thanksgiving Day,

Yaskel's exceptions had to be filed by November 29, 1995, to be timely.^{2/} The State argues that Election Day should not be counted as a legal holiday because State offices were open and mail was delivered by the U. S. Postal Service on that day. General Construction Law §24 includes "each general election day" as a legal holiday. It is the public identity of the day, not what transpires on the day, that makes any given day a "legal holiday" within the meaning of our Rules. Election Day, a legal holiday, was properly excluded from the "working days" calculation. In any event, even were we to count Election Day as a "working day" within the meaning of the Rules, November 28, 1995, would be the last day for filing exceptions and Yaskel's exceptions, postmarked on that date, would still be timely. Yaskel's exceptions are, therefore, properly before us, whether Election Day is included or excluded from the filing period.

Yaskel argues in her exceptions that, while she had a personality conflict with her co-worker, it was the co-worker's fault and that Marchesi conspired with the co-worker against new employees. Although Yaskel was present and represented at the hearing before the ALJ, she also asserts in her exceptions that she can call additional witnesses to support her position that Marchesi's testimony should not have been credited by the ALJ.

The ALJ credited Marchesi's testimony that he was not angered by Yaskel's inclusion of a union representative in their

^{2/}Veterans Day fell on a Saturday in 1995.

meeting about her second, generally negative, probationary evaluation. Based upon agreements reached at the meeting, Marchesi changed Yaskel's evaluation to a satisfactory one. Although Yaskel's third evaluation was satisfactory, Marchesi testified, and the ALJ found, that her performance in the final thirteen weeks of her employment degenerated. The ALJ credited Marchesi's testimony that, in the weeks prior to the end of Yaskel's probationary period, she was not making an effort to work harmoniously with others in the office and that she was inappropriately questioning her work assignments and office procedures. Her final evaluation was, therefore, negative and she was terminated.

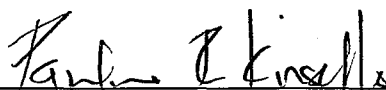
There is nothing in the record which would warrant disturbing the ALJ's credibility resolution and factual findings. That Yaskel now asserts that there are other witnesses whom she could call to support her version of the facts does not warrant a reversal of the ALJ's findings, or even a remand to take such testimony.^{3/} The record evidences that she was afforded full opportunity to present all relevant evidence and testimony at the hearing.

Yaskel's exceptions are denied and the ALJ's determination that Yaskel was not terminated because of her exercise of her statutorily protected rights is, therefore, affirmed.

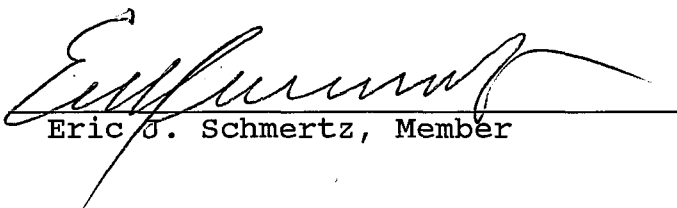
^{3/}There is no allegation that this evidence is newly discovered.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: February 28, 1996
Albany, New York



Pauline R. Kinsella, Chairperson



Eric O. Schmertz, Member

2D- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ROBERT W. CASE,

Charging Party,

-and-

MONROE COMMUNITY COLLEGE,

Respondent.

CASE NOS. U-12496

U-12536

U-12547

U-12548

U-12594

U-13319

ROBERT W. CASE, pro se

NIXON, HARGRAVE, DEVANS & DOYLE (EUGENE D. ULTERINO of
counsel), for Respondent

BOARD DECISION AND ORDER

These cases come to us on exceptions filed by Robert W. Case to a decision by an Administrative Law Judge (ALJ) on several charges he filed against his former employer, the Monroe Community College (College).^{1/} Case's first charge (U-12496) alleges that the College did not renew his term appointment as director of athletics and head basketball coach because he had filed a grievance through the Association and that the College thereafter generally and specifically threatened, punished, investigated, criticized, and bribed him to cause him to withdraw the grievance and resign from employment. All of the remaining

^{1/}One other charge (U-12624) was filed against the College by Case's bargaining agent, the Monroe Community College Faculty Association (Association). The ALJ dismissed the Association's charge and it has not filed any exceptions to the ALJ's decision.

charges allege that the College continued to harass and punish Case for maintaining the first grievance, for filing another, and for otherwise engaging in activities protected by the Public Employees' Fair Employment Act (Act). All of the charges allege a violation of §209-a.1(a) of the Act.

After seventeen days of hearing on a record containing in excess of 2,000 pages and hundreds of exhibits, the ALJ dismissed all of the charges. The ALJ held that the College's decision not to renew Case's term appointment was made before it had any knowledge that Case had consulted with the Association about a late job evaluation and a student's complaint that Case had sexually and otherwise harassed her, and before any grievances had been filed. Moreover, the ALJ found no credible evidence of union animus on the part of any of the several College officials who were involved in the many actions which Case alleges were retaliatory. In making these determinations, the ALJ relied, in part, upon findings made by Arbitrator Benewitz on a grievance filed regarding Case's nonrenewal. In material respect, Arbitrator Benewitz found that Case had been directed several times by his supervisor to avoid any contact with the student who had made the harassment complaint against Case and that Case had repeatedly disobeyed those instructions, to the point of twice stating to his supervisor that he "had to do what [he] had to do". Arbitrator Benewitz found that Case's refusal to comply

with his supervisor's directives regarding student contact was the reason he was not renewed.

The ALJ made separate dispositions of each of Case's allegations apart from his nonrenewal and found that none were in any way improper under the Act. In general summary of these several dispositions, the ALJ concluded that the College had simply responded in a permissible manner to circumstances created by Case, who had become, through the spring and summer of 1991, increasingly derelict in his job performance and attendance and unresponsive to inquiries made by his immediate supervisor and other College officials. Certain other actions claimed to have violated the Act were found by the ALJ not to have been undertaken by the College or its agents at all, e.g., an investigation prompted by a Monroe County legislator of the College's athletic department finances and an alleged offer to Case by an "associate" of the student who had allegedly been harassed to have the student's criminal harassment complaint dropped if Case would withdraw any grievances and improper practice charges.

Case argues to us that the ALJ's decision must be negated because the Benewitz arbitration award was modified in part on appeal and that the award was "at the heart of the Administrative Law Judge's decision". Case offers to "withdraw the entire PERB matter" if we render the ALJ's decision a "nondecision". Case otherwise argues that the ALJ erred as a matter of fact and law

in finding that the College did not violate the Act, in not issuing subpoenas for the appearance of certain persons, in not permitting certain testimony, and in not reopening the hearing in response to a different arbitration award.

The College argues that the Benewitz arbitration award was properly considered and that the ALJ committed no material errors of fact or law in rendering her decision or in making any of the rulings in issue during the lengthy processing of these charges.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

The findings of fact and conclusions of the Benewitz arbitration award regarding Case's nonrenewal are not challengeable in this proceeding.^{2/} It was conclusively held in that award that Case disobeyed the instructions of his supervisor regarding student contact and that this was the cause for the nonrenewal of his term appointment. The Appellate Division's decision modifies the arbitration award only to delete that part of the award actually entered which states that Case had been "terminated for insubordination". The award was modified only because the issue presented by the parties to the arbitrator, in relevant part, was whether the College violated the parties' contract in conjunction with the "nonrenewal" of a term appointment. Although modifying the award entered so that it conformed to the issue actually presented, i.e., "nonrenewal",

^{2/}Ranni v. Ross, 58 N.Y.2d 715 (1982).

rather than "termination", the Appellate Division's decision did not disturb any of the findings of fact made by the arbitrator. Therefore, the ALJ committed no error in relying upon the findings made in that award.

Moreover, wholly apart from the Benewitz award, the ALJ found, and we agree, that the record establishes that none of the College's actions were improperly motivated or otherwise violative of the Act. The decision not to renew Case's term appointment was made before the responsible College officials knew Case had contacted the Association either formally or informally. Case's allegation that the College had to have known about his consultation with the Association because information was "leaked" to them has no credible support in the record.

The record also does not establish any reasonable basis to conclude that the College was improperly motivated in making any of its decisions regarding Case's employment. To the contrary, the record reflects an administration willing to give Case every consideration, even to the point of renewing his appointment, despite the harassment allegations, until Case's own actions left them with no reasonable option other than to let his term appointment expire. Case's exercise of statutorily protected rights was minor and of a type the College's administration would encounter on a regular basis. The record is simply not reasonably susceptible to a conclusion that the College undertook a wide-ranging conspiracy involving multiple actors and actions

within and without the College's administration to retaliate against Case because he talked to the Association and filed a grievance or two which he would not withdraw.

Case alleges and argues that what happened after he was told his appointment would not be renewed was in furtherance of an unlawful plan of retaliation commenced with that nonrenewal. Once it is concluded, as we do, that the nonrenewal was not in violation of the Act, the rest of Case's allegations of impropriety, all tied directly to that first act, similarly fail. The ALJ's findings that Case's several allegations of impropriety apart from the nonrenewal have no merit as a matter of fact and law are fully supported by the record. The ALJ's decision discusses each allegation and the rationale set forth in her decision need not be repeated here.

The arbitration award which Case argues necessitates a reopening of the record is immaterial to the disposition of this charge. That arbitrator's award does not, as Case argues, even question, much less attack, the credibility of any College official. The arbitrator holds only that the College had inadvertently denied Case access to certain documents which formed the basis for a decision to discipline Case. Nothing in that award affects the credibility resolutions actually made by the ALJ or otherwise warrants a reopening of the record.

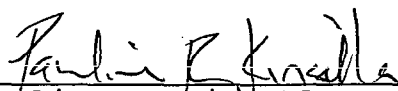
We have considered Case's other bases for reopening this extensive record and find them all similarly without merit. The

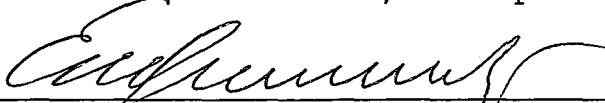
rulings made during the hearings were either within the scope of the ALJ's discretion, were correct, or were nonprejudicial. In these regards, Case was afforded a fair and reasonable opportunity to present evidence in support of his allegations. The overwhelming weight of the record evidence leads us, as it has other disinterested reviewers previously, to the inescapable conclusion that every employment consequence about which Case complains in these charges stemmed from his unwillingness to do his job as the College expected and to follow the reasonable directives issued to him by his supervisors. Case's guilt or innocence on the charges leveled against him by the College or others is immaterial and we express no opinion in that regard. In affirming the ALJ's decision, we find only that none of the College's actions involve per se violations of the Act and that none of the decisions made or actions taken by the College stemmed from motives unlawful under the Act.

For the reasons set forth above, Case's exceptions are denied and the ALJ's decision is affirmed.

IT IS, THEREFORE, ORDERED that the charges must be, and hereby are, dismissed.

DATED: February 28, 1996
Albany, New York


Pauline R. Kinsella, Chairperson


Eric J. Schmertz, Member

2E- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Charging Party,

-and-

CASE NO. U-16482

BRIDGE AND TUNNEL OFFICERS BENEVOLENT
ASSOCIATION,

Respondent.

PROSKAUER, ROSE, GOETZ & MENDELSON (NEIL H. ABRAMSON of
counsel), for Charging Party

HAYT, HAYT & LANDAU (LAWRENCE J. WEINGARD of counsel), for
Respondent

BOARD DECISION AND ORDER

On February 17, 1995, the Triborough Bridge and Tunnel Authority (Authority) filed an improper practice charge alleging that the Bridge and Tunnel Officers Benevolent Association (Association) had violated §209-a.2(b) of the Public Employees' Fair Employment Act (Act) by submitting two nonmandatory demands to arbitration. The charge was thereafter heard and decided by an Administrative Law Judge (ALJ). The Authority excepts to that part of the decision of the ALJ which rejected the Authority's argument that the demands were barred from arbitration because they were modifications of original proposals and his decision that one of the modified demands is a mandatory subject of negotiation. The Association excepts to the ALJ's determination that one of its demands is nonmandatory.

This is the second time these parties have been before us to seek a determination on the negotiability of demands submitted to arbitration after expiration in 1991 of their last agreement. In our earlier decision,^{1/} we found, as here relevant, that the following two Association demands were nonmandatory because, by the Association's own admission, the demands were intended to cover retirees. Those demands were as follows:

Demand 62A

The [Authority] shall increase the present major medical coverage to \$1,000,000 per person, per illness, per year.

Demand 64

Article VII, 1 shall be modified to read:

The Authority shall contribute to the Bridge and Tunnel Officers Family Protection Plan a sum annually for each employee as follows:

January 1, 1991 - \$1,500.00
January 1, 1992 - \$2,000.00

Thereafter, on February 14, 1995, the Association filed an amended response to the Authority's interest arbitration petition, referencing the proceedings up to that point and further stating that it

has been directed to withdraw from arbitration certain demands. Accordingly, and in compliance with the Board's directive, we hereby withdraw demands ... 62A [and] 64 ... as those demands appear in Exhibit "a" annexed hereto. However, and in accordance with the reasoning and rationale set forth in the Board's December 22, 1994 [decision], the Association would modify demands 62A and 64 downward so as to read as

^{1/}Bridge and Tunnel Officers Benevolent Ass'n, 27 PERB ¶3076 (1994).

follows and request that they be forwarded to the Arbitration panel.

1) Modified Union Demand 62A:

The Authority shall increase the major medical coverage for current employees and current employees who may retire during the life of the Contract, to \$1,000,000 per person, per illness, per year.

2) Modified Union Demand 64:

Article VII, 1 shall be modified to read:

The Authority shall contribute to the Bridge and Tunnel Officers Family Protection Plan a sum annually for each current employee and current employees who may retire during the life of the contract as follows:

January 1, 1991 - \$1,500.00

January 1, 1992 - \$2,000.00

By letter dated March 28, 1995, the Association sought to further modify demand 64 by modifying Article VII, §2 as follows:

The Authority shall continue to make Welfare Fund contributions for employees retiring on or after January 1, 1977 and who retired prior to December 31, 1990 in accordance with the annual sums for each employee which became effective on January 1, 1990.^{2/}

The first of ten hearing days of interest arbitration was held on March 6, 1995, and the last on April 20, 1995. The arbitration panel issued its award on June 20, 1995, but its decision did not cover demands 62A or 64. The panel agreed to retain jurisdiction over those Association demands pending PERB's determination on their negotiability.

^{2/}The clause in the parties' expired agreement states: "The Authority shall make Welfare Fund contributions to employees retiring on or after January 1, 1977; the payment for such retirees shall be in the same amount as for active employees."

The ALJ found that during negotiations, prior to mediation and arbitration, the parties had discussed demands 62A and 64 as they related to both current employees and retirees. The levels of contribution per employee discussed are the same in the modified demands as in the original demands, with the overall cost to the Authority being reduced because the modified demands exclude retirees who were included in the original demands.

The ALJ determined that the modified demands were not time-barred, as asserted by the Authority, because they were not "new" demands and the subject matter of the demands had previously been negotiated by the parties. He further found demand 62A to be mandatory as it related to major medical coverage for current employees or employees who retired during the life of the contract being negotiated. Demand 64 was found by the ALJ to be nonmandatory because, even though the demand, as modified, applied only to current employees, the contributions sought from the Authority by the Association were to be paid to a fund that made payments to both current employees and retirees.

For the reasons set forth below, we affirm, in part, and reverse, in part, the ALJ's decision.

The ALJ correctly determined that demands found by this Board to be nonmandatory subjects of negotiation may be amended, clarified, or otherwise modified and resubmitted if the demand as revised is not a new demand. Although the Authority argues that no amendments or modifications to demands should be allowed after we have issued a "scope" decision, to preclude the parties from

amending demands would unduly and unnecessarily restrict the bargaining process.^{3/}

The Association's modified demands did make substantive changes in its original demands, but the demands as modified cannot be considered new within the meaning of our decisions. The subject matter of both demands was discussed during the parties' negotiations and the modification results in a narrowing of the class of persons to whom the demands would apply. Such a narrowing is a permissible modification in the demand. As we noted in City of Schenectady^{4/}:

While the demands offered by the PBA contain substantive revisions, they cannot be construed as raising new or different subjects of bargaining, as would be the case if a party sought to withdraw a demand concerning one subject and substitute for it a demand on an entirely different subject which had not been previously negotiated. Indeed, the City does not appear to suggest that the parties did not engage in negotiations concerning the [subject matter of the demands]....

A party may correct observed deficiencies in a demand and seek negotiations on the amended demand, including submission of the amended demand to an interest arbitration panel during the period of time that the interest arbitration proceeding is pending.

^{3/}We have allowed the amendment of demands made in a brief submitted to the Board, Amherst Police Club, Inc., 12 PERB ¶3071 (1979); at a pre-hearing conference, Niskayuna Police Benevolent Ass'n, Inc., 14 PERB ¶3067 (1981); and after a determination that the original demand was nonmandatory, City of Schenectady, 22 PERB ¶3018 (1989).

^{4/}22 PERB ¶3018, at 3048 (1989).

Having determined that the Association's demands were not barred from arbitration simply because they were modifications of the original demands, we turn to the substance of the proposals.

Both modified demands 62A and 64 cover current employees and current employees who may retire during the life of the contract. In Cohoes Police Benevolent and Protective Association,^{5/} we made clear that the mandatory nature of a demand depends upon it being related to terms and conditions of employment of current employees. That the compensation or benefit may be paid after the employee leaves the service of the employer is not dispositive of the negotiability issue.

Both of the demands before us refer to current employees and to current employees who retire during the life of the agreement, which would not, on the face of the demands, render them nonmandatory. However, the agreement being negotiated by these parties is for the years 1991 and 1992. At the time the Association's original demands were made, the parties' previous agreement had not yet expired, but the demand referred to all employees, including employees then retired, rendering the demand nonmandatory. The modification, which removed the nonmandatory language, was not made by the Association until 1995, years after the expiration of the parties' last agreement. As such, the reference in the modified demand to "current employees who may retire during the life of the contract" may now be reasonably

^{5/}27 PERB ¶13058 (1994).

read to refer to employees who were employed during 1991 and 1992 but who may have retired at the time that the modified demand was made. If we were to construe our reference in Cohoes to "current" employees to mean only those employees who were employed by an employer at the time the demand under consideration is first made, then the Association's modified demands in this case would be nonmandatory because the admitted intent of its demands is to include all persons employed by the Authority during 1991 or 1992, even if they may have retired from employment by 1995, when the modified demand was made. The reference in Cohoes to "current" employees, however, was not intended to be measured only by when a bargaining demand is first made. "Current" employees, for purposes of assessing the negotiability of a demand in negotiations, and unless otherwise defined by the parties, must mean all employees who were employed during the term of the contract being negotiated, even if the negotiations continue, as they so often do, beyond the term of the prior contract and the demand in issue is not first presented until well into the negotiations. Just as a demand may be retroactive, so too may its application to the class of employees covered by the demand. We, therefore, determine that the reference to "current employees who may retire during the life of the contract" does not render either of the Association's modified demands nonmandatory because the demands capture only those persons who were actually employed during the period in which the demand will apply, i.e. 1991-92. By specifically

excluding from its demands those persons who retired before January 1, 1991, the Association limited its demand to current employees for purposes of this scope of negotiations dispute.

The ALJ found that demand 64 was nonmandatory because it sought contributions from the Authority to a fund which made payments to both current employees and retirees. He relied upon our decision in New York City Transit Authority.^{6/} The ALJ misconstrued New York City Transit Authority when he interpreted it to mean that a demand for payments on behalf of current employees to a fund or program which may also make payments to, or provide benefits for, individuals who are not members of the bargaining unit is nonmandatory. The reason that the demand in that case was nonmandatory was because it called for the employer to make payments for both unit employees and retirees. The demand was for the benefit of individuals who were not members of the bargaining unit and who were not, therefore, properly persons on whose behalf bargaining demands could be made. To read New York City Transit Authority as did the ALJ would render nonmandatory those demands, for example, calling for payments on behalf of current unit employees to health insurance carriers or plans which also cover any non-unit persons. We have consistently found such demands to be mandatory. New York City Transit Authority does not and was not intended to hold to the contrary and we reverse the ALJ's holding in this regard.

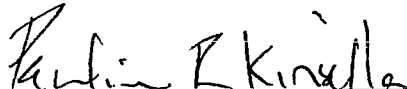
^{6/}22 PERB ¶6501 (1989).

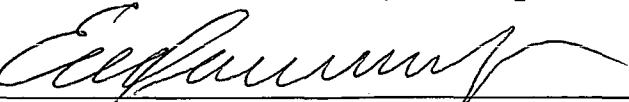
We do find, however, that the modification of Article VII, §2 in demand 64, as contained in the Association's March 28 letter, is nonmandatory because it refers solely to retired employees. Because it is severable from Article VII, §1 in modified demand 64, our finding regarding Article VII, §2 does not affect the negotiability of Article VII, §1 which applies to bargaining unit members employed during the term of the demand.

Based on the foregoing, we dismiss the Authority's exceptions. We find that the Association's submission of Article VII, §2 to arbitration violated §209-a.2(b) of the Act. The Association is hereby ordered to withdraw from arbitration its March 28, 1995 demand regarding Article VII, §2. We affirm the ALJ's decision finding that the Association's modified demand 62A is mandatorily negotiable and we grant the Association's exceptions and reverse the ALJ's finding as to Article VII, §1 in modified demand 64, which we find to be mandatorily negotiable.

IT IS, THEREFORE, ORDERED that the Authority's charge must be, and it hereby is, dismissed as it relates to demands 62A and 64 Article VII, §1.

DATED: February 28, 1996
Albany, New York


Pauline R. Kinsella, Chairperson


Eric J. Schmertz, Member

3A- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 463, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4466

TOWN OF LEWISTON,

Employer,

-and-

TEAMSTERS, LOCAL 264,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

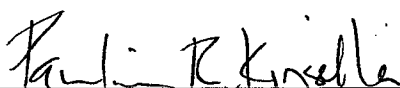
IT IS HEREBY CERTIFIED that Teamsters, Local 264 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

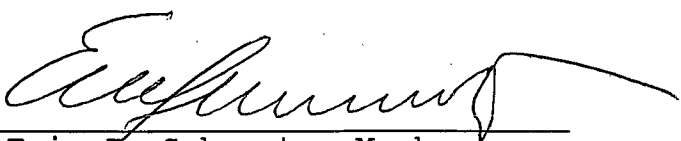
Unit: Included: All Highway and Drainage Department employees.

Excluded: All supervisory and clerical employees in the Highway and Drainage Departments and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters, Local 264. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: February 28, 1996
Albany, New York


Pauline R. Kinsella, Chairperson


Eric J. Schmertz, Member

3B- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION
LOCAL 424, A DIVISION OF UNITED INDUSTRY
WORKERS COUNCIL 424,

Petitioner,

-and-

CASE NO. C-4469

NORTHPORT-EAST NORTHPORT UNION FREE
SCHOOL DISTRICT,

Employer,

-and-

LOCAL 144, LONG ISLAND DIVISION
SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective

negotiations and the settlement of grievances.

Unit: Included: All full and part time employees in the following categories: Head Custodian, Assistant Head Custodian, Leadmen Custodian (Elementary), Lead Groundskeeper, Lead Maintenance Mechanic, Custodian, Groundskeeper, Custodian-Bus Driver, Maintenance Mechanic, Maintenance Helper, Painter, Courier, and Custodial Storekeeper.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: February 28, 1996
Albany, New York


Pauline R. Kinsella, Chairperson


Eric J. Schmertz, Member

30- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION
LOCAL 424, A DIVISION OF UNITED INDUSTRY
WORKERS DISTRICT COUNCIL 424,

Petitioner,

-and-

CASE NO. C-4472

COLD SPRING HARBOR CENTRAL SCHOOL DISTRICT,

Employer,

-and-

HARBOR OFFICE PERSONNEL ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their

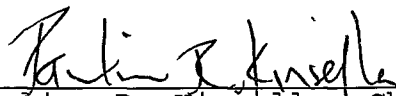
exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All clerical employees.


Excluded: All other employees, and those clerical employees designated as confidential.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: February 28, 1996
Albany, New York



Pauline R. Kinsella, Chairperson



Eric J. Schmertz, Member

30- 2/28/06

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4475

VILLAGE OF EAST ROCHESTER,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

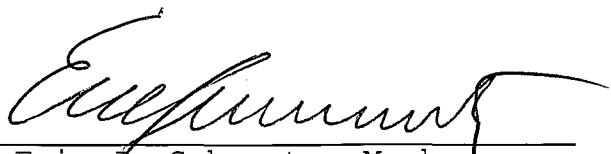
Unit: Included: Laborer, truck driver, mechanic, mechanic's helper and mason.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: February 28, 1996
Albany, New York


Pauline R. Kinsella, Chairperson


Eric J. Schmertz, Member

3E- 2/28/96

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HARPURSVILLE TEACHERS ASSOCIATION, NYSUT,
AFT, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4490

HARPURSVILLE CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Harpursville Teachers Association, NYSUT, AFT, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

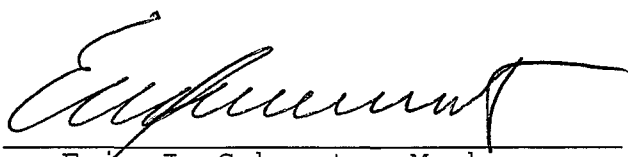
Unit: Included: Teachers, counselors, teaching assistants, psychologists, health professionals and those individuals who have served 20 or more consecutive days per school year, as substitutes.

Excluded: Superintendent and Building Principals.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Harpursville Teachers Association, NYSUT, AFT, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: February 28, 1996
Albany, New York


Pauline R. Kinsella, Chairperson


Eric J. Schmertz, Member